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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,230

06/30/2006

Volker Fricke

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6714

30449 7590 09/24/2009

SCHMEISER, OLSEN & WATTS  
22 CENTURY HILL DRIVE  
SUITE 302  
LATHAM, NY 12110

EXAMINER

RUBIN, BLAKE J

ART UNIT

PAPER NUMBER

2457

MAIL DATE

DELIVERY MODE

09/24/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Supplemental  
Notice of Allowability**

Application No.

10/552,230

Examiner

BLAKE RUBIN

Applicant(s)

FRICKE ET AL.

Art Unit

2457

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/4/09.
2. ☒ The allowed claim(s) is/are 13 and 17-20.
3. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some\* c) ☐ None of the:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
- \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)   | 5. <input type="checkbox"/> Notice of Informal Patent Application                      |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                       | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input checked="" type="checkbox"/> Information Disclosure Statements (PTO/SB/08),<br>Paper No./Mail Date <u>9/4/09</u> | 7. <input type="checkbox"/> Examiner's Amendment/Comment                               |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material                 | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance   |
|  | 9. <input type="checkbox"/> Other _____.   |

/Rubin Blake/  
Examiner, Art Unit 2457

/ARIO ETIENNE/  
Supervisory Patent Examiner, Art Unit 2457

### **REASONS FOR ALLOWANCE**

1. The following is an examiner's statement of reasons for allowance of claims 13, and 17-20:

The features of claim 13 were not found to be taught or suggested by the prior art.

Specifically,

Estimating, by the server, a corresponding future data transfer size of the data actually stored on the first device, said estimating being based on a historic data transfer size for data previously transferred from the first device to the sever over the network, said schedule currently being based on the historic data transfer size for the first device;

Keeping track, by the server, of an off-line device of the plurality of devices that is off-line and information the off-line device's schedule for transferring data from the off-line device to the server as soon as the off-line device becomes on-line;

determining, by the server, when to upload new software from the server to the plurality of devices, taking into account a reduction in an effective communications bandwidth, said reduction resulting from the data transferred from the plurality of devices to the server.

With respect to keeping track of than off-line user, the examiner finds the applicants arguments' persuasive. The prior art (Payne) recites, "The information sources 12 thus provide the information basis for outgoing broadcast transmitted by the central broadcast server 34 through nationwide wireless broadcast network immediately or on a scheduled basis to both on- and off-line computers 14." Which assert that the preceding quote from Payne, col. 11, lines 56-

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60 relates to data transfer from the server to the off-line device. In contrast, the preceding feature of claim 13 relates to data transfer from the off-line device to the server.

With respect to determining when to upload new software, the examiner finds the applicants arguments' persuasive. The prior art (Chefalas) discloses alternatively delivering a software product to a user by shipping the software product to the user instead of electronically delivering the software product to the user if the software product is too large for the bandwidth required for electronic delivery, which does not disclose waiting to deliver the software product electronically until there is available bandwidth for enabling an electronic delivery of the software product.

Claims 17-20 are dependent off of claim 13, and are therefore distinguishable over the prior art for the reasons above.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLAKE RUBIN whose telephone number is (571) 270-3802.

The examiner can normally be reached on M-R: 8:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ario Etienne can be reached on (571) 272-4001. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

9/22/09

/Rubin Blake/  
Examiner, Art Unit 2457

/ARIO ETIENNE/  
Supervisory Patent Examiner, Art Unit 2457